

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

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DANIEL RAY HOWARD,

Plaintiff,

**V.**

CAPTAIN CARTER, et.al.,

**Defendants.**

U.S. DISTRICT COURT  
N.D. OF ALABAMA

CV 02-HGD-1773-NE

**ENTERED**

MAY 1, 2003

## MEMORANDUM OF OPINION

The Memorandum of Opinion (Document #14) entered March 28, 2003, is hereby WITHDRAWN, and the following Memorandum of Opinion shall be SUBSTITUTED therefore.

The magistrate judge filed a report and recommendation on March 6, 2003, recommending that certain claims and defendants in this action filed pursuant to 42 U.S.C. §1983 be dismissed for failing to state a claim upon which relief can be granted under 28 U.S.C. §1915A(b), and other claims and defendants be referred to the magistrate judge for further proceedings consistent therewith. No objections have been filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the Court is of the opinion that the magistrate judge's factual findings in the report are due to be and are hereby ADOPTED. The magistrate judge's legal recommendations are also due to be ACCEPTED, and shall be construed to include the retention and dismissal

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of certain claims against defendant Smiley, and denial of the plaintiff's request for a temporary restraining order and preliminary injunction.

Accordingly, the following claims and defendants are due to be dismissed for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C. §1915A(b):

1. Plaintiff's Fourteenth Amendment due process claim related to alleged excessive force used against him by defendants Carter, Cooper, Fails, Tucker, Edwards, Pickett, McGowen, and Smiley;

2. Plaintiff's Fourth Amendment search and seizure claim, his Eighth Amendment claim related to the loss of his personal property, his Fourteenth Amendment due process claim related to the loss of his personal property, his Fourteenth Amendment equal protection claim and his First Amendment access to court claim against defendants Cooper, Freeman, Tucker, Clarke, Mayfield, Singleman, Edmon, Pickett, McGowen, and Smiley; and

3. Defendants Richards, Snyder and Jones.

The plaintiff's Motion for a Temporary Restraining Order and Temporary Injunction contained within the plaintiff's complaint and amended complaint (Document #1 and #11) are due to be DENIED.

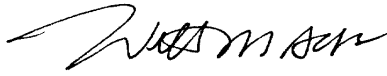
Moreover, the following claims and defendants are due to be REFERRED to the magistrate judge for further proceedings consistent therewith:

1. Plaintiff's Eighth Amendment excessive force claim related to a November 28, 2001, assault incident, against defendants Carter, Cooper, Fails, Tucker, Edwards, Pickett, McGowen, and Smiley; and

2. Plaintiff's First Amendment Freedom of Religion claim against defendants Cooper, Freeman, Tucker, Clarke, Mayfield, Singleman, Edmon, Pickett, McGowen and Smiley.

An appropriate order will be entered.

DATED this 30<sup>th</sup> day of April, 2003.



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WILLIAM M. ACKER, JR.  
UNITED STATES DISTRICT JUDGE